IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.469 OF 2001

Sidram Birappa Chavan ]
Prisoner No.C-1394, ]
Kolhapur Central Prison, ]
Kalamba, Kolhapur-416007 ]..Appellant

Vs.

State of Maharashtra ]..Respondent

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Mrs.Rekha Trivedi, (Appointed) Advocate for Appellant
Ms.Usha Kejariwal A.P.P. for the State

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**CORAM: N.V.DABHOLKAR AND SMT.V.K.TAHILRAMANI,JJ.**

**DATE : FEBRUARY 17, 2006**

**ORAL JUDGMENT (PER DABHOLKAR,J.):**

1. Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 challenges the judgment and order dated 18th April, 2001 delivered by IInd Additional Sessions Judge, Sangli. By the impugned judgment, learned Judge, at the conclusion of Sessions Case No. 243 of 1999, held appellant/accused guilty for offence punishable

under Section 302 of Indian Penal Code. He is sentenced to suffer rigorous imprisonment for life, fine of Rs.200/- in default rigorous imprisonment for one month.

2. According to prosecution story, the incident in question took place on 7th March, 1999 at about 4.00 a.m. i.e. on the night between 6th and 7th of March, 1999. The victim of the incident namely;- Mangal is wife of accused Sidram. They were solemnised four years prior to alleged incident. According to prosecution, there used to be disputes between spouses over sexual access to the husband and this is said to be the motive for the murder of wife. It is said that at the material time, accused killed wife Mangal by throttling.

. According to prosecution evidence and more particularly that of P.W.1 Bhamabai Patole, she was originally resident of village Walsung, Taluka Jat, District Sangli. At the material time, she was residing at village Kavalapur at the Wasti (farm house) of Sandeep Mane. Deceased Mangal was her daughter and Mangal along with her husband

(accused) was also staying at village Kavalapur at a distance of about 1 km. from the residence of mother Bhamabai. The couple was staying at the farm house of one Deepak Patil. On the alleged day at about 4.00 a.m. accused hurriedly went to Bhamabai and after waking her up, he informed; "Mangal Geli" i.e. Mangal was no more. The complainant Bhamabai went to the residence of the accused with him. She tried to wake up the daughter but the daughter was lying dead on the mattress. According to Bhamabai, there were scratches on the neck of victim Mangal. Mangal was taken to civil hospital Sangli where she was declared dead. Naturally, Bhamabai proceeded to police station and reported the matter vide complaint Exhibit-11, that set investigation into motion. The trial after committal, concluded in conviction as narrated above.

3. The prosecution has examined just six witnesses. Reference to nature of evidence rendered by Bhamabai (P.W.1) mother of the victim has already come in the narration of the prosecution story. The next important witness is P.W.5 Shankar Patil a Private Medical Practitioner.

He was residing in the vicinity of farm house of Deepak Patil and therefore, knew deceased Mangal as also accused since prior to incident. It appears that accused and his wife had occasionally approached this witness for treatment. On the day of incident, he had visited the place of accused and advised to shift Mangal to hospital after examining her pulse. He also claims to have visited the hospital and according to him, there he overheard accused Sidram narrating others that he had killed the wife because wife refused him sexual access. Baburao Hegde (P.W.2) is comparatively insignificant witness. He has only narrated that there was discord between Mangal and Sidram. He had seen Mangal lying dead in the house of accused at the material time.

. There are two Medical Officers on record. Dr.Sandeep Vanjari (P.W.3) is Autopsy Surgeon and after carrying out the post mortem, he has opined that Mangal’s death was result of Asphyxia due to throttling. P.W.4 Dr.Sanjeev Bhave has clinically examined the accused on 8th March, 1999 at 4.45 p.m. and he had noted couple of abrasions on the neck of the accused which possibly could be the

nail marks. According to him, these injuries were aged more than 24 hours but less than 48 hours. P.S.I. Ramchandra Raskar has carried out investigation.

4. So far as defence of the accused is concerned, general defence is of total denial. He claimed that witnesses are deposing false against him. According to him, his mother in law Bhamabai frequently used to visit him for taking away her daughter inspite of clear warning that she should not come to his door steps so frequently. On the alleged day, he was in the grape garden at about 4.00 a.m. when he heard cries of his son. By going home, as he tried to wake up his wife, he noticed that she was not waking up therefore, he had taken his son with him and reported the matter to mother-in-law. He had also called Doctor to examine Mangal and Doctor advised to take her to the dispensary where the Doctor declared Mangal as dead. In the earlier part of the statement, he has denied that there was any discordant note in his matrimonial life. He admitted that he had been to the place of his mother-in-law at about 4.00 a.m. and informed her that Mangal was dead.

5. Admittedly there is no direct evidence in this matter and trial Court has recorded a conviction on the basis of conclusion that prosecution has firmly established following circumstances;

1) Accused and victim were the only family members at the material time (third family member being a child aged two years);

2) Death was by throttling;

3) Death was at 4.00 a.m., such hours that when there is no third person ordinarily could have reached the house of accused;

. For the reasons discussed in para 10, the learned trial Judge has arrived at a conclusion that evidence of Bhamabai (P.W.1) was sufficient to arrive at a conclusion that the sexual life of the couple was not hormonius and there was some discord between the two. Probably, this was the motive for accused to kill his wife. The trial Judge has also shown willingness to place reliance on the extra judicial confession of the accused that has come through P.W.5 Shankar Patil. Consequently, the finding of the guilty.

6. Heard advocate Ms.Rekha Trivedi (appointed) for the appellant and A.P.P. Smt.Usha Kejariwal for the Respondent-State.

. Advocate Ms.Trivedi took a note of circumstances held proved by the trial Court and tried to assail those and thus pursuade us that those are neither firmly established nor those together establish a complete chain bringing home the guilt. According to her, there are circumstances on record which are compatible with the innocence of the accused and therefore, view favourable to the accused needs to be taken and he deserves to be acquitted.

. Although Bhamabai (P.W.1) deposed that there used to be quarrels between spouses on account of sexual relations, according to learned counsel for the appellant, this is too cryptic and scanty evidence to provide a motive. She pointed out that no medical evidence is brought on record to demonstrate that the Doctors were approached for a problem in the sexual life of the couple. The details of the discordant note in the sexual life are available in the complaint Exhibit-11.

According to Bhamabai, the daughter had informed her that she did not like to maintain sexual relations with her husband and he was maintaining those per-force. This statement although hearsay evidence, coming through Bhamabai, since prosecution relies upon the same as motive, would come within purview of Section 32(1) of Evidence Act. Denial of access by legally wedded wife to sexual life, cannot be ruled out to be sufficient cause for husband to get infuriated against the wife. No doubt, prosecution has not brought on record any medical evidence about the same, but the details of the discord as referred from F.I.R. indicate that medical assistance was not necessary. It is not case of Bhamabai that medical assistance was sought and therefore, it is not a case where any medical evidence is suppressed. We are not inclined to accept the submission of the learned counsel that prosecution has failed to bring on record any possible motive.

7. Submission of learned counsel that contents of the panchnama regarding seizure of clothes of the victim are of no help is required to be accepted to some extent. Exhibit-15 shows that ‘saree and

skirt' of the victim seized after the post mortem were noticed to be bearing semen stains. On reference to report of the Analyst Exhibit-26, it is evident that none of the articles on the person of the deceased were having semen stains. No doubt, we will have to accept the submission of learned counsel that clothes of the victim were not stained with semen. However, this situation leads us nowhere. This certainly does not create any situation favourable to the defence. At the most, it can be said that observations of the panch witnesses at the time of seizure of the clothes of the victim, were wrong.

8. Learned counsel has relied upon admission of P.W.6 Ramchandra Raskar that Police Station had registered accidental death at 8.00 a.m. We had referred to Marathi deposition of P.S.I. Ramchandra Raskar. It is his deposition that "Akasmat Mrityu" was registered i.e. it was registered as unexpected, unnatural death and not as "accidental death". As a matter of practice, in every unnatural death so registered by police, they can proceed with the inquiry into the same as empowered by Section 174 of the Code of Criminal

Procedure. Only after they get sufficient material that someone else is responsible for such death; the entry is converted into registration of crime. Here in the matter at hands, crime was registered on the basis of complaint of Bhamabai (P.W.1), Exhibit-11 which was registered at 12.35 hours on the same day i.e. 7th March, 1999. We are of the opinion that the admission of the Investigating Officer as attempted to be read by learned counsel for the appellant, cannot be read in that fashion and therefore, is not of any help to the accused to lead an inference that initially it was believed to be an accident. In any case, after considering the opinion of the Medical Officer that death was caused by throttling, the entry as "accident" would be meaningless. Lastly, advocate Ms. Trivedi has pointed out that accused has not absconded, he has proceeded to the place of mother-in-law, given her intimation about death of the daughter and he was also present at the hospital as admitted by P.W.5 Shankar. Simultaneously, Ms.Trivedi pointed out that panchnama of scene of occurrence indicates that there is a grape garden to the north of the residence of the accused and hence, story propounded by the defence is, according to her,

probabilised.

. No doubt, accused has said in his statement under Section 313 of Code of Criminal Procedure that he was busy irrigating grape garden when he heard cry of the child and therefore, he returned to house and found that his wife was lying dead in the bed. This version of accused is not supported by any admission of Bhamabai that accused had informed him this detailed story. Either on going through the deposition of Bhamabai or on going through the complaint Exhibit-11, Bhamabai has narrated that accused woke her up at about 4.00 a.m. and informed her "Mangal Geli" i.e. Mangal expired. She has not narrated the accused to have told her that this occurred when he was irrigating grape garden. No suggestion to that effect is offered to Bhamabai during her cross-examination.

9. No doubt, Bhamabai seems to have not been able to avoid temptation to improve when she deposed that she noticed scratches on the neck of the victim Mangal when she went to see the daughter upon message by the accused. Such version does not find place in the F.I.R. But F.I.R. is not

required to be encyclopaedic. Even if we believe for the sake of argument that Bhamabai has improved over her police statement to that extent, in view of the availability of medical evidence in the form of post mortem notes at Exhibit-19, the improvement would be insignificant. Exhibit-19 records two abrasions on the neck of the victim and also opinion that death was due to "Asphyxia because of throttling". In fact, the final opinion is given vide Exhibit-20 separately only after report of Histopathology of the viscera was available. But Exhibit-20 must be considered to be part and parcel of post mortem notes Exhibit-19.

10. The story pleaded by the accused also does not convince us on the touchstone of probability. According to his own story, accused was working in the field. We do not know the distance between his residence and the location where he was irrigating the field. He claims that he returned to his residence because he heard cries of his child who was one and half years old. Ordinarily, when the mother of the child was in the house, the father may not leave his work and return home for attending the child.

11. As per panchnama Exhibit-16, accused was arrested on the same day at 17-45 hours. By relying upon evidence of P.W.5 Dr.Shankar, advocate Ms. Trivedi pointed out that version of the accused that he also accompanied the victim to the hospital, is required to be accepted. According to advocate for the appellant, this conduct of the accused is compatible only to the innocence of the accused. Although this conduct can suggest innocence, such an unnatural conduct can also be possible as a safety measure. In the case at hands, death of wife has taken place at the house of the husband where there is no third member who could have killed the victim and in this context, a useful reference can be done to panchnama of the arrest Exhibit-16 which indicates that accused had abrasion injuries to his neck which fact is confirmed by Dr.Sanjay who has issued a certificate to that effect (Exhibit-22) after clinical examination of the accused on 8th March, 1999 at about 4.45 p.m. According to Dr.Sanjay, these abrasions on both sides of the neck of the accused were aged more than 24 hours but less than 48 hours. 24 hours prior to 4.45 p.m. of 8th March,

1999, would be 4.45 p.m. of 7th March, 1999. The incident has taken place at 4.00 a.m. of 7th March, 1999.

. The natural course of human conduct as considered by us hereinabove and the injuries on both sides of the neck of the accused himself, broken pieces of bangles lying by the side of the gunny bags in the house of the accused, do not permit us to feel convinced about the story put forth by the accused.

12. We are therefore, convinced that trial Judge was justified in holding that the circumstances as enlisted hereinabove, were established with firmness and thus lead to only conclusion that accused must have throttled his wife.

13. It may be stated that although attention of the accused was drawn to these injuries noticed on his person during the statement under Section 313 of Code of Criminal Procedure, accused himself has offered no explanation for the same (Question No.8).

. Last but not least, if defence relies upon evidence of P.W.5 Shankar Patil a private medical practitioner who visited the hospital and admitted presence of accused at the hospital, the said witness is claimed to have overheard extra judicial confession of the accused while accused was talking to someone else. Unfortunately, there is no cross-examination challenging this version of P.W.5 Shankar.

14. The impugned judgment therefore, calls for no interference. Hence, appeal is dismissed.

15. Registrar (Judicial) shall furnish a certified copy of this judgment to appellant free of costs through prison authorities.

16. We quantify professional charges of Advocate Ms.Trivedi who conducted the appeal for the prisoner at the cost of the State, to be Rs.2,500/-.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]